

COUNCIL BILL NO. 2015-214

A RESOLUTION

AUTHORIZING SETTLEMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHAMPAIGN,
ILLINOIS, as follows:

Section 1. That the settlement of the claim by Benjamin Mann as set forth in Case No. 14-cv-02200 is authorized in the amount set forth in the release attached to this Council Bill which is hereby approved for settlement of all issues in conjunction with the aforementioned claim.

Section 2. That the City Manager and City Attorney are hereby authorized to execute such documents and take such actions as are necessary to implement the settlement of the claim.


COUNCIL BILL NO. 2015-214

PASSED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

APPROVED AS TO FORM:



City Attorney

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, BENJAMIN MANN, being of lawful age, for and in consideration of Two Hundred Twenty-five Thousand and 00/100ths Dollars (\$225,000) that the City of Champaign, Illinois agrees to pay to the undersigned, and other good and valuable consideration, does hereby and for his heirs, executors, administrators, successors and assigns fully release, acquit and forever discharge the CITY OF CHAMPAIGN, THE CHAMPAIGN POLICE DEPARTMENT AND ALL INDIVIDUAL CITY OF CHAMPAIGN POLICE OFFICERS INCLUDING CHRISTOPHER C. AIKMAN, DAVID BUTLER, NATHANIEL M. EPLING, KRISTINA HAUGEN, MARSHALL HENRY, MATT R. RUSH AND CULLY T. SCHWESKA, and their agents, servants, successors, heirs, executors, administrators, associates, employees, and all other persons, corporations, firms, associations or partnerships of and from any and all claims, actions, causes of action, demands, rights of action of whatsoever kind or nature at law or in equity, including Federal Central District of Illinois 14-2200; damages, controversies, costs, loss of service, loss of society, expenses and compensation whatsoever, which the undersigned now has or which may hereafter accrue against said Releasees on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, property damage, violations of constitutional rights, and/or state law claims, and the consequences thereof resulting or to result from the incident, casualty or event which occurred on or about March 16, 2014, which resulted in his arrest. It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, that the payment of the above-stated consideration is full accord and satisfaction of a disputed claim, that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said Releasees deny liability therefore and intend merely to avoid litigation and buy their peace. It is further understood and agreed that this settlement is conditioned on each party being responsible to pay only the individual party's attorney's fees, costs and expenses associated with this matter.

It is understood and agreed that this settlement is a release of any and all claims against any individual City of Champaign employee, including but not limited to, any City of Champaign police officers, and although no payments are being made by any City employee, there may be City employees who are third party beneficiaries of this release.

It is understood and agreed that the terms of this release shall become effective upon the City Council's formal approval of the release and receipt of payment of the settlement proceeds. The release will be presented to the City Council for formal approval as soon as practicable. Upon approval by the City Council, the City will make all good faith efforts to issue settlement proceeds payable within 14 days, or as soon as otherwise practicable. Such payment shall be made payable to BENJAMIN MANN and HALE LAW LLC.

The undersigned hereby declares and represents that the injuries sustained, losses or expenses are or may be permanent, progressive and/or indefinite, and that recovery therefrom is

uncertain and indefinite and in making this Release, it is understood and agreed that the undersigned relies wholly upon the undersigned's judgment, belief and knowledge of the nature, extent, effect and duration of said injuries and liability therefore and this release is made without reliance upon any statement or representation of the party or parties hereby released or their representatives or by a physician or surgeon by them employed.

The undersigned declares and represents that the above-stated consideration is the sole and only consideration for this release and that no promise, inducement or agreement not herein expressed has been made to the undersigned and that this Release contains the entire agreement between the parties hereto and that the terms of this Release are contractual and not a mere recital.

The undersigned declares and represents that if there are liens or rights against the funds paid in consideration for this Release, he has not made any assignment or transfer of any right, claim, demand, cause of action or other matter covered by this release as set forth herein. In addition, the undersigned agrees to indemnify the Releasees and their agents and insurers against any claims of lien against said funds whether known or unknown.

The undersigned declares and represents that he has not filed any claim or lawsuit against any other party with any court agency or other administrative or arbitral entity connected in any way with the incident, casualty or event which occurred on or about March 16, 2014.

The undersigned declares and represents that this release was negotiated at arm's-length and entered into freely by the undersigned, with the advice of counsel. In the event any ambiguity exists in any provision of this release, such ambiguity is not to be construed by reference to any doctrine or statute calling for ambiguities to be construed against the drafter of the document.

It is understood and agreed that the provisions of this release, including, without limitation, the representations, warranties and covenants made herein, shall survive the execution of this release and the performance by the undersigned of his respective obligations under this release.

It is understood and agreed that this release constitutes the entire agreement of the parties and supersedes all prior contemporaneous agreements and understandings and any and all prior correspondence, conversations, or memoranda are merged herein and replaced hereby.

It is understood and agreed that no part or provision of this release may be changed, modified, waived, discharged or terminated except by instrument in writing signed by the party against whom enforcement of such change, modification, waiver, discharge or termination is sought. The failure of a party to seek redress for violation of, or to insist upon strict performance of, any provision of this release shall not be a waiver of that provision by the party or estop that party from asserting fully any and all of its rights under this release.

The undersigned declares and represents that he will execute such other and further documents, and take such other and further actions, as may be reasonably requested by the City of Champaign, Illinois for the sole purpose of effectuating the agreements herein within ten (10)

business days following a written request and after receipt of the settlement proceeds.

It is understood and agreed that this release will be governed by the laws of the State of Illinois without regard to its choice of law provisions. The parties agree that the state and federal courts located in the State of Illinois shall have exclusive jurisdiction in any action, suit or proceeding based on or arising out of this release. Accordingly, the parties hereby: (a) submit to the personal jurisdiction of such court; (b) consent to the service of process in connection with any action, suit or proceeding; and (c) waive any other requirement (whether imposed by statute, rule of court or otherwise) with respect to personal jurisdiction, venue or service of process.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this 11 day of December, 2015.

CAUTION: READ BEFORE SIGNING

Benjamin Mann
BENJAMIN MANN

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

On the 11 day of December, 2015, before me personally appeared BENJAMIN MANN, to me known to be the person named herein and who executed the foregoing Release and acknowledged to me that he has read the foregoing Release and understands the contents thereof and that he voluntarily executed the same.

Alma Erdmann
Notary Public

Approved as to form:

Official Seal
Alma Erdmann
Notary Public, State of Illinois
My Commission Expires 04/01/2017

Attorney for Plaintiff



REPORT TO CITY COUNCIL

FROM: Dorothy Ann David, City Manager

Dad

DATE: December 11, 2015

SUBJECT: EXPLANATION OF COUNCIL BILL NO. 2015 - 214

A. Introduction: The purpose of this Council Bill is to authorize settlement of the claim of Benjamin Mann for \$225,000. This settlement would conclude all claims in lieu of further litigation.

B. Recommended Action: The Administration recommends approval of this Council Bill.

C. Background: This claim results from an incident involving an arrest incident near a residence in Garden Hills. The incident occurred on March 16, 2014.

Typically when claims come in, the City Attorney and Risk Manager and others review the claims to see if there is potential City liability. If it is clear that the City could face liability for the claim, the City Attorney and Risk Manager determine possible City exposure. Exposure is the key word in evaluating claims. Many claims could be litigated, and the City (or its employees) exonerated, however frequently the cost of litigating a claim would exceed the amount of possible settlement. Exposure also includes, as in all cases, some likelihood that the City or its employees could be found liable for damages alleged by the claimant.

After evaluation of these exposures, the City Attorney consulted with the City's outside counsel and counsel for the City's insurer as well as with the attorney for the claimant to determine if a settlement was possible. In this claim, there has been agreement on the settlement amount. The City has previously released information relative to this incident giving rise to this case in response to a Freedom of Information Request which is posted on the City's website.

D. Alternatives:

1. Approve the Council Bill.
2. Do not approve the Council Bill and provide other guidance to the administration.

E. Discussion of Alternatives:

Alternative 1 would authorize the City's representatives to finalize the settlement.

a. Advantages

- Concludes the claim immediately, saving claimant and City personnel from the rigors of more litigation.
- Removes the uncertainty of the outcome of a trial and appeal.
- Saves both sides the expenses of more depositions, further hearings, discovery-related matters, trial, and possible additional appeal.
- Recognizes the interest of both parties in the settlement.

b. Disadvantages

- Expenditure of funds by the City.
- May be perceived by some persons as unwarranted and by others as too small a settlement.

Alternative 2 would not approve the Council Bill.

a. Advantages

- Could reduce the total expenditure by the City if the outcome resulted in damages against the City.

b. Disadvantages

- Additional expenses would reduce the value of an outcome.
- If a trial results in a higher verdict, total costs could also be increased by additional litigation expenses.

F. Community Input. No community input was requested on the settlement, though the public will have an opportunity to comment at the meeting.

G. Budget Impact: The settlement in the amount of \$225,000 is available from the Retained Risk Fund and from the City's insurer for payment of the settlement of this matter.

H. Staffing Impact: The staffing impact is within the allotted staffing resources.

Prepared by:



Frederick C. Stavins
City Attorney